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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10	United States of America,)	
11	Plaintiff,)	CR 11-1013-TUC-RCC
12	vs.)	
13	Ghermon Lateke Tucker (007),)	GOVERNMENT'S RESPONSE TO
14	Ja'Cory Dante Ranger (008))	DEFENDANTS' JOINT MOTIONS IN
15	Jerome Noel Ranger (010))	LIMINE
	Defendants.)	(Doc. 767)

16 Comes now the United States of America by its attorneys, John S. Leonardo, United
17 States Attorney, and James T. Lacey and Kimberly E. Hopkins, Assistant United States
18 Attorneys, and hereby files its response to the Defendants' Joint Motions in Limine (Doc.
19 #767).

20 **1. Defendants' Joint Motion to Suppress Statements by Mexican Codefendants**
21 **Recorded by CI (Doc. 585)**

22 The confrontation clause does not bar the admission of statements made by the
23 Mexican coconspirators. Under *Crawford*, statements made during and in furtherance of
24 a conspiracy are non-testimonial, so admission of such statements does not require meeting
25 the requirements of the Confrontation Clause. *Crawford v. Washington*, 541 U.S. 36, 53-53
26 (2004). Additionally, the statements made by the Mexican codefendants are non-

1 testimonial because the declarants had no expectation that the statements might be used
2 later at trial. *U.S. v. Larson*, 460 F.3d 1200, 1213 (9th Cir. 2006). Furthermore, the
3 government's use of an undercover informant does not violate the Fourth Amendment
4 because the defendants were the subjects of an ongoing investigation and had not yet been
5 formally indicted. *United States v. Henry*, 447 U.S. 264, 272 (1980). Defendants who are
6 suspected of ongoing criminal activity have no protection from their own misplaced
7 confidence in an undercover government informant, *Hoffa v. United States*, U.S. 293
8 (1966).

9 **2. Defendants' Joint Motion to Suppress the Warrantless Nighttime Search of**
10 **Mayco Ledezma-Prieto's residence on November 11, 2010. (Doc. 745)**

11 The government does not intend to introduce evidence from the search of Mayco
12 Ledezma-Prieto's residence on 11/11/10, in its case in chief at trial. However, if the
13 defense - either in opening statements or cross examination of government witnesses -
14 causes the issue of prior home invasions to become relevant, the government may seek to
15 introduce such evidence.

16 **3. Defendants' Joint Motion to Suppress Unnecessarily Suggestive Pretrial or In-**
17 **Court Identification of Ghermon Tucker as Being Present at the February 4,**
18 **2011, Meeting in Phoenix. (Doc. 702)**

19 On February 14, 2011, agents met with the CHS and showed him eighteen
20 photographs. The photographs included individual drivers license photographs of the
21 registered owners of the vehicles observed by surveillance agents at the February 4, 2011,
22 pre-planning meeting and the registered owner of the Chevrolet Impala observed at the
23 Chipman Road residence. Two of the drivers license photographs depicted black males;
24 Ghermon Tucker and Michael Austin. The drivers license photographs were without name
25 or biographical identification. The CHS identified the photograph of Ghermon Tucker as
26 the black male with Ledezma-Prieto at the February 4th meeting. At the Suppression
Hearing in March of 2011, the CHS also made an in-court identification of Ghermon

1 Tucker as the black male at the February 4th meeting. On May 23, 2012, Ghermon Tucker
2 entered a plea of guilty, and admitted that he was present at the February 4th meeting.

3 At the June 28, 2012, Motion to Vacate Hearing, the government agreed on the
4 record, that it would not use Ghermon Tucker's admissions at his change of plea hearing
5 against him at trial. The government also agreed that it would not introduce the CHS's pre-
6 trial identification of Ghermon Tucker on February 14th. However, any in-court
7 identifications by the CHS are admissible.

8 Based on the totality of the circumstances in this case, the pretrial photographic
9 identification procedures used on February 14th were not impermissibly suggestive.
10 *Simmons v. United States*, 390 U.S. 377, 384 (1968); *United States v. Bagley*, 772 F.2d 482,
11 492 (9th Cir. 1985). Assuming arguendo, that the court finds that the pretrial identification
12 procedure was impermissibly suggestive, any in-court identifications should not be
13 excluded because the identification of Tucker was sufficiently reliable pursuant to *Neil v.*
14 *Biggers*. The CHS had ample opportunity to view Tucker, as he had direct visual contact
15 of Tucker during the February 4th meeting. Even though the meeting was short in duration,
16 the CHS had a more than adequate opportunity to view Tucker and make a reliable
17 identification. *See United States v. Lustig*, 555 F.2d 737, 749 (9th Cir. 1977). The degree
18 of attention by the CHS was also sufficient as there were a total of five people at the
19 meeting, and they were the only individuals in the building. Ten days later, when presented
20 with photographs, the CHS positively identified Tucker. Moreover, the CHS's record for
21 reliability is a good one, as he also positively and correctly identified Gregorio Guzman-
22 Rocha, Mayco Ledezma-Prieto and Jamie Santiago Lopez-Lorenzo as being present at the
23 February 4th meeting. The CHS also positively and correctly identified Tucker at the
24 Suppression Hearing. Therefore, taken together, these circumstances leave little room for
25 doubt that the CHS' identification at the suppression hearing was reliable and correct, and
26 any in-court identification of Ghermon Tucker at trial is admissible. *United States v.*

1 *Montgomery*, 150 F.3d 983, 993 (9th Cir. 1998).

2 **4. Defendants' Joint Motion to Suppress Unnecessarily Suggestive Pretrial or In-**
3 **Court Identification of Eight of the Black Codefendants as Being Present at a**
4 **Meeting in Phoenix on March 2, 2011. (Doc. 732)**

5 The defendants' motion is premature as the government has not yet identified the
6 cooperators that will be testifying at trial. The government will, a week before trial,
7 identify the persons who will be possible witnesses at trial. That will be the appropriate
8 time for the court to entertain the defendant's motion to suppress.

9 **5. Defendants' Joint Motion to Suppress any Other Pretrial or In-Court**
10 **Identifications Tainted by Further, as yet Undisclosed, 8x10 Glossy**
11 **Photographic Show-ups.**

12 The defendants' motion is premature as the government has not yet identified the
13 cooperators or any other government witnesses that will be testifying at trial. The
14 government will, a week before trial, identify the persons who will be possible witnesses
15 at trial. That will be the appropriate time for the court to entertain the defendant's motion
16 to suppress.

17 **6. Defendants' Joint Rule 404(b) Motion to Suppress the Mexican Codefendants'**
18 **Unsupported Claims that Unnamed Black Crew Members Committed**
19 **Unspecified Home Invasions on Unknown Dates While Working for the**
20 **Mexican Codefendants. (Doc. 272)**

21 The defendants' motion is premature as the government has not yet identified the
22 cooperators that will be testifying at trial. Until the government determines the witnesses
23 that will be used at trial, the government is unable to identify the prior criminal activity
24 committed by the defendants with the Mexican codefendants. Moreover, all parties will
25 need to discuss with the Court how the issue of prior home invasions will be dealt with at
26 trial. For example, if a Mexican codefendant committed a home invasion with the black
codefendants, all parties will have to decide if this will be explained on direct or cross
examination during trial.

However, any statements regarding why the black crew members were going to be
used in this offense are relevant if the statements were made during and in furtherance of

1 the conspiracy. Moreover, any statements that relate to the March 2, 2011, attempted home
2 invasion are relevant if discussed by any member of the conspiracy, during and in
3 furtherance of the conspiracy.

4 **7. Motion to Suppress Non-Testifying Codefendants' Post Arrest Statements on**
5 **Confrontation Grounds Pursuant to *Bruton v. United States*.**

6 The government does not intend to introduce non-testifying codefendants' post arrest
7 statements in its case in chief. However, post arrest statements made by the defendants
8 going to trial may be relevant and admissible under *Bruton*.

9 **8. Motion to Suppress Evidence of Alleged Gang Affiliation.**

10 The government does not intend to introduce evidence of gang membership or gang
11 affiliation in its case in chief at trial. However, if the defense - either in opening statements
12 or cross-examination of government witnesses - causes the issue of bias to become relevant,
13 the government may seek to introduce such evidence. Additionally, the government does
14 intend to introduce evidence of gang membership for impeachment purposes to prove bias
15 on the part of any potential defense witness.

16 **9. Motion to Suppress Bullet Holes in JaCory Ranger's Escalade Put There by**
17 **Damond Reagan's Taurus .45.**

18 The government does not intend to introduce evidence of the bullet holes or of the
19 bullet extracted from JaCory Ranger's Cadillac Escalade in its case in chief at trial.

20 **10. Motion to Suppress Alleged Self Inflicted Gunshot Wound to JaCory Ranger's**
21 **Leg.**

22 The government does not anticipate bringing into evidence in its case in chief at trial
23 that JaCory Ranger allegedly shot himself in the leg.

24 **11. Motion to Suppress Ghermon Tucker's Flight in Jerome Ranger's Ford**
25 **Expedition on January 6, 2011.**

26 The government does not intend to introduce evidence in its case in chief at trial that
Ghermon Tucker was arrested for unlawful flight from law enforcement while driving
Jerome Ranger's Ford Expedition. However, the government may make reference to the

1 fact that Tucker was driving the same vehicle back on January 6, 2011, that he was stopped
2 in on March 2, 2011. The government does not anticipate bringing into the evidence the
3 circumstances of Tucker's flight.

4 **12. Motion to Suppress the Fact that the Colt Python Seized in this Case was used**
5 **in the Solved Murder of a Man in Vacaville, California.**

6 The government does not intend to introduce this evidence in its case in chief at trial.
7 However, the government will introduce that the Colt Python was seized from the glove box
8 of the Cadillac Escalade on March 2, 2011, and that defendant JaCory Ranger admitted to
9 borrowing the weapon from a man named Omar.

10 **13. Motion to Suppress Ardawn Bryant's Prior Arrest for Possession of a Defaced**
11 **Weapon.**

12 The government does not intend to introduce this evidence in its case in chief at trial.

13 Respectfully submitted this 20th day of July, 2012.

14 JOHN S. LEONARDO
15 United States Attorney
16 District of Arizona

17 *s/Kimberly E. Hopkins*

18 JAMES T. LACEY
19 KIMBERLY E. HOPKINS
20 Assistant U.S. Attorneys

21 Copy of the foregoing served electronically
22 this 20th day of July, 2012, to:

23 Dan H. Cooper, Esq.
24 Bradley J. Armstrong, Esq.
25 Stephen J. Young, Esq.
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